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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,633	10/19/2001	James M. Kain	20341-68796	6018

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EXAMINER

GARRETT, ERIKA P

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/032,633

Applicant(s)

KAIN, JAMES M.

Examiner

Erika Garrett

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

The examiner has considered and reviewed the applicant's Amendment, filed on August 18, 2003.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Gignac (5,248,183). In regards to claims 1-2,6-9,11-14, 17, Gignac discloses the use of a juvenile seat (12) comprising a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides (figure 1) and a seating surface between the sides to receive an occupant, the base having on at least one of the sides, an upstanding side wall having a cavity (22) facing outwardly away from the seating surface; a cup holder (30) comprising a shell having an inner surface providing a cup retainer (32) and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and the outer surface merges with the upstanding side wall to form an exterior surface of the base; an opened positioned extending from the base in which the cup retainer is open upwardly and the outer surface is separated from the upstanding side wall; wherein the base provides first & second posts (90) extending into the cavity. See figures 1-3.

In regards to claims 3,10, the shell includes first and second connectors (located on the ends of 90), each connector being formed to include a post (90) opening to receive one of the posts, the connectors pivoting about the posts when the cup holder is moved between the closed and opened positions. In regards to claim 4, further comprising the outer shell surface has a convex shape (34), the upstanding sidewall has a convex shape, and the outer shell surface cooperated with the sidewall to continue the convex shape of the sidewall to form a smooth convex shape when the cup holder is in the closed position. In regards to claim 5, juvenile seat comprising a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides (figure 1) and a seating surface between the sides to receive an occupant, the base having on at least one of the sides, an upstanding side wall having a cavity (22) facing outwardly away from the seating surface; a cup holder (34) comprising a shell having an inner surface providing a cup retainer (82) and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and the outer surface merges with the upstanding side wall to form an exterior surface of the base; an opened position extending from the base in which the cup retainer is open upwardly and the outer surface is separated from the upstanding side wall; wherein at least one of the base or the cup holder includes a detent (88) to engage a recess provided by the cup holder or the base to prevent free movement of the cup holder from the closed position.

In regards to claims 15-16, further comprising the shell including a first hinged portion and the side the cup holder is coupled to include a second hinged portion, the

coupling between the cup holder and the one of the sides being provided by the hinged portions; the shell includes an upper portion and a lower portion and when the user applies a force to the lower portion of the shell, the cup holder pivots toward the opened position.

### ***Response to Arguments***

Applicant's arguments filed August 18, 2003 have been fully considered but they are not persuasive. In response to applicant's argument that *Gignac fails to show or describe a vehicle seat and that there is no teaching or suggestion of a juvenile seat adapted to be placed on the seat of a vehicle*, a recitation of the intended use of the claimed invention must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. **If the prior art structure is capable of performing the intended use, then it meets the claim.** In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. The examiner is of the opinion that the console is capable in fact performing the use of a juvenile seat especially for persons of small stature i.e., infants. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 703-605-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

EG  
August 29, 2003

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600